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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JAMES M. WILLIAMS,

11 Plaintiff,

12 vs.
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15 WILLIAM D. GORE, *Sheriff of San*
16 *Diego County*, et al,

17 Defendants.

CASE NO. 12CV2952-MMA (WMc)

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

[Doc. No. 24]

18 Plaintiff James M. Williams, a state prisoner proceeding *pro se* and *in forma*
19 *pauperis*, has filed a Second Amended Complaint ("SAC") against Defendants
20 William D. Gore, Sheriff of San Diego County, and the County of San Diego. *See*
21 Doc. No. 22. Plaintiff alleges violations of his First Amendment rights arising out of
22 Defendants' purported failure to provide meaningful access to the courts.
23 Defendants move to dismiss Plaintiff's claims pursuant to Federal Rule of Civil
24 Procedure 12(b)(6). For the reasons set forth below, the Court **GRANTS**
25 Defendants' motion.

26 **BACKGROUND**

27 This matter arises out of events occurring while Plaintiff was incarcerated at
28 George Baily Detention Center and San Diego Central Jail, in the custody of the

1 Sheriff of San Diego County.¹ Generally, Plaintiff contends that Defendants
 2 violated his First Amendment right of access to the courts because in lieu of visiting
 3 a law library, he was offered only limited access to legal research materials through
 4 the County's contract with Legal Research Associates. According to Plaintiff, the
 5 lack of access to a law library prevented him from pursuing a federal civil rights
 6 action for Eighth Amendment claims arising out of the denial of medical treatment
 7 and physical injuries sustained while incarcerated.

8 Plaintiff further alleges that Defendants frustrated his access to the courts by
 9 failing to provide sufficient postage for mailing legal documents to the courts;
 10 failing to provide ink pens, sufficient paper, and envelopes; and failing to provide
 11 sufficient photocopies of court documents and notary services. Plaintiff claims that
 12 these deficiencies prevented him from pursuing his federal civil rights action.
 13 Plaintiff seeks monetary damages.

14 Defendants move to dismiss Plaintiff's SAC in its entirety, arguing that
 15 Plaintiff fails to state a plausible First Amendment claim.

16 **LEGAL STANDARD**

17 To survive a motion to dismiss, a complaint must contain sufficient factual
 18 matter, accepted as true, to state a claim that is plausible on its face. *Ashcroft v.*
 19 *Iqbal*, 556 U.S. 662, 678 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S.
 20 544, 555 (2007) (quotation marks omitted); *Conservation Force v. Salazar*, 646 F.3d
 21 1240, 1241-42 (9th Cir. 2011). The Court must accept the well-pleaded factual
 22 allegations as true and draw all reasonable inferences in favor of the non-moving
 23 party. *Daniels-Hall v. National Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010);
 24 *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). Further, although the pleading
 25 standard is now higher, the Ninth Circuit has continued to emphasize that prisoners
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27 ¹ Because this case comes before the Court on a motion to dismiss, the Court
 28 must accept as true all material allegations in the complaint and must also construe the
 complaint, and all reasonable inferences drawn therefrom, in the light most favorable
 to Plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

proceeding *pro se* in civil rights actions are still entitled to have their pleadings liberally construed and to have any doubt resolved in their favor. *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012).

DISCUSSION

I. Plaintiff's First Amendment Claim

Plaintiff sues Defendant Gore in his individual capacity for violation of his First Amendment right of access to the courts. Plaintiff also alleges his First Amendment claim against the County pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). To maintain a First Amendment claim against either defendant, Plaintiff must sufficiently allege that he was deprived of a constitutional right. Defendants argue that he has not done so. The Court reaches the same conclusion, albeit by a different path.

Under the First Amendment, state prisoners have a right to access the courts. *Lewis v. Casey*, 518 U.S. 343, 346 (1996), citing *Bounds v. Smith*, 430 U.S. 817, 821, 823, 828 (1977). “[A]ccess to the courts means the opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one’s personal liberty.” *Id.* at 384 (Thomas, J. concurring). The right is limited, but includes civil rights actions. *Id.* at 354. To prove a violation of the right of access to the courts, a prisoner must establish, *inter alia*, “actual injury” – that is, “actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348; *see also Monell*, 436 U.S. at 658.

There are two types of access to the courts claims: backward-looking and forward-looking. *See Christopher v. Harbury*, 536 U.S. 403, 413-14 (2002). Here, Plaintiff alleges a backward-looking claim concerning a lost opportunity to litigate his civil rights claims. To adequately plead a backward-looking denial of access to the courts claim, Plaintiff must allege sufficient facts to show: (1) the loss of a non-

1 frivolous or arguable underlying claim; (2) the official acts frustrating the litigation;
2 and (3) a remedy that may be awarded as recompense but that is not otherwise
3 available in a future suit. *Christopher*, 536 U.S. at 414-15.

4 Plaintiff cannot satisfy this pleading standard. Plaintiff alleges that he lost the
5 opportunity to pursue non-frivolous Eighth Amendment claims related to his denial
6 of adequate medical treatment and the deliberate indifference of prison officials to
7 his serious medical needs. He sufficiently alleges facts in support of his underlying
8 Eighth Amendment claims. *Id.* at 417 (holding that a “complaint should state the
9 underlying claim . . . just as if it were being independently pursued.”). Plaintiff
10 further alleges that his ability to litigate his claims was frustrated by Defendants’
11 ongoing practice of contracting with Legal Research Associates to provide
12 inadequate legal assistance, depriving him of access to a law library, denying and
13 prohibiting the receipt and distribution of pens and paper necessary for drafting legal
14 claims, prohibiting the distribution of adequate envelopes and postage necessary for
15 mailing documents to the courts, and prohibiting photocopying. SAC, Count One ¶¶
16 3-4; Count Two ¶ 4. According to Plaintiff, these actions resulted in a “total denial
17 of the means and materials necessary to secure the capability to prepare and file
18 actionable claims to the Courts.” *Id.*, Count Two ¶ 5.

19 Plaintiff seeks damages as a remedy in this suit. However, such a remedy
20 remains available with respect to his underlying Eighth Amendment claims.
21 *Christopher*, 536 U.S. at 421. The claims are not time-barred nor does Plaintiff
22 otherwise allege that they have not been “lost.” *Id.* The statute of limitations
23 applicable in section 1983 actions is the two-year period set forth at California Civil
24 Procedure Code § 335.1 for personal injury actions. *See Maldonado v. Harris*, 370
25 F.3d 945, 954 (9th Cir. 2004). Imprisonment delays the accrual of the cause of
26 action for up to two years pursuant to California Code of Civil Procedure § 352.1.
27 As such, Plaintiff has a maximum of four years to file a civil rights action based on
28 his Eighth Amendment claims. The events giving rise to these causes of action

1 occurred in March and April 2011. The statute of limitations has not yet expired.

2 Furthermore, Plaintiff does not allege any current impediment to pursuing his
3 Eighth Amendment claims. Plaintiff concedes that he now has access to a law
4 library, and he clearly has not been frustrated in his efforts to litigate. *Lewis v.*
5 *Casey*, 518 U.S. 343, 348-49 (1996) (to state an access to courts claim, inmate must
6 “demonstrate that a nonfrivolous legal claim had been frustrated or was being
7 impeded”). In sum, Plaintiff fails to allege a “remedy that may be awarded as
8 recompense but not otherwise available in some suit that may yet be brought.”
9 *Christopher*, 536 U.S. at 415. Plaintiff’s Eighth Amendment claims are viable.²
10 Therefore, his First Amendment claim is not.

11 **2. Leave to Amend**

12 The Court must give a *pro se* litigant leave to amend his complaint “unless it
13 determines that the pleading could not possibly be cured by the allegation of other
14 facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (quotation
15 omitted), citing *Noll v. Carlson*, 809 F.2d 1446, 1447 (9th Cir. 1987). Here, for the
16 reasons set forth above, Plaintiff cannot amend his allegations to state a plausible
17 First Amendment access-to-courts claim against Defendants. Nor may Plaintiff
18 amend his complaint in this action to add his underlying Eighth Amendment claims.
19 Federal Rule of Civil Procedure 20(a)(2) requires that the right to relief arise out of
20 common events and contain common questions of law or fact. “Unrelated claims
21 against different defendants belong in different suits” *George v. Smith*, 507
22 F.3d 605, 607 (7th Cir. 2007). Plaintiff’s Eighth Amendment claims arise out of
23 events unrelated to those precipitating his access-to-courts claim, and indict the
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25 ² The Court acknowledges that Plaintiff’s Eighth Amendment claims ultimately
26 may not be successful if he, *inter alia*, failed to exhaust his administrative remedies
27 with respect to those claims. *McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir.
28 2002) (exhaustion must be satisfied prior to filing suit). However, a prisoner’s failure
to exhaust is an affirmative defense, not a pleading requirement, and must be
demonstrated by the defense. *Jones v. Bock*, 549 U.S. 199, 127 S. Ct. 910, 921 (2007);
Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003).

1 actions of different defendants. Plaintiff may pursue his Eighth Amendment claims
2 against the appropriate defendants in a separate civil rights lawsuit.

3 **CONCLUSION**

4 Based on the foregoing, the Court **GRANTS** Defendants' motion to dismiss.
5 The Court **DISMISSES** Plaintiff's Second Amended Complaint without prejudice
6 for failing to state a claim upon which relief maybe granted pursuant to Federal Rule
7 of Civil Procedure 12(b)(6). The Court **DENIES** Plaintiff leave to amend. *See*
8 *Robinson v. California Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D. Cal.
9 1998) ("Since plaintiff has not, and cannot, state a claim containing an arguable
10 basis in law, this action should be dismissed without leave to amend; any
11 amendment would be futile."), citing *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir.
12 1996). The Clerk of Court shall enter judgment accordingly and terminate this
13 action.

14 **IT IS SO ORDERED.**

15 DATED: December 18, 2013

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17 Hon. Michael M. Anello
18 United States District Judge
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